

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHRIS BRUGGER,

Plaintiff,

v.

DAVID MAHONEY, et al.,

Defendants.

ORDER

Case No. 17-cv-721-wmc

Plaintiff Chris Brugger, a prisoner in the custody of the Wisconsin Department of Corrections, has submitted a proposed civil action under 42 U.S.C. § 1983. Plaintiff has filed a certified copy of a trust fund account statement in support of the motion for leave to proceed without prepaying the fee. After considering the motion and supporting documentation, the court concludes that plaintiff qualifies for indigent status.

Even when a prisoner litigant qualifies for indigent status, the litigant must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). Using information for the relevant time period from plaintiff's trust fund account statement, I conclude plaintiff's initial partial filing fee to be \$27.19. For this case to proceed, plaintiff must submit this amount on or before October 10, 2017.

Plaintiff has also filed a motion for use of release account funds to pay the filing fee in this case. Dkt. 2. I will grant in part plaintiff's motion. There is no federal law permitting this court to require state officials to submit the entire filing fee or other litigation costs by accessing a prisoner's release account funds. However, pursuant to 28 U.S.C. § 1915(b)(1), prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). Therefore, if sufficient funds do not exist in plaintiff's regular account to

pay his initial partial payment, plaintiff may use funds from his release account to pay the \$27.19 initial partial payment.

ORDER

IT IS ORDERED that,

1. Plaintiff Chris Brugger is assessed \$27.19 as an initial partial payment of the \$350.00 fee for filing this case. Plaintiff is to submit a check or money order made payable to the clerk of court in the amount of \$27.19 or advise the court in writing why plaintiff is not able to submit the assessed amount on or before October 10, 2017.

2. Plaintiff's motion for use of release account funds, dkt. 2, is GRANTED IN PART. If plaintiff does not have enough money to make the initial partial payment from his regular account, plaintiff may use his release account funds to pay the initial partial payment.

3. If, by October 10, 2017, plaintiff fails to make the initial partial payment or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff filing this case at a later date.

4. No further action will be taken in this case until the clerk's office receives plaintiff's initial partial filing fee as directed above and the court has screened the complaint as required by the Prisoner Litigation Reform Act, 28 U.S.C. § 1915A. Once the screening process is complete, a separate order will issue.

Entered this 19th day of September, 2017.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge